

Serial No. 10/633,938

### REMARKS

Initially, Applicants express their appreciation to Examiner T. M. Nguyen for the courtesies extended to their undersigned attorney during telephonic interviews held on June 7, 9, 14, and 15, 2011, as well as those of May 5, 11, and 23. The Office communications of May 13, 18, and 31, and June 7 2011, (two), the written communication from the undersigned attorney of June 10, 2011, and the present amendment set forth and accord with the substance and results of those interviews.

In the February 16, 2011, Office action, Claims 128 to 134, 145 to 156, 171 to 182, 198 to 209, 212, and 228 to 239 received examination. With the indicated amendments, Applicants retain them here for further examination.

#### *A. Formal Objections and Rejections*

The drawings were objected to under 37 C.F.R. § 1.83(a), the specification was objected to under 35 U.S.C. § 132(a), and Claims 128 to 134, 145 to 156, 171 to 182, 198 to 209, 212 and 228 to 239 are rejected under 35 U.S.C. 112, first paragraph. All of these actions had, as their basis the language of paragraph (A) of the independent claims that recite, at least in part, The ‘first and second opposite extremities’ of the belt, wrapping a belt around and “in contact with a substantial majority of a patient’s chest” near said patient’s sternum, the belt being in “continuous contact with the patient’s chest, including the front, sides, and a portion of the back of said patient’s chest,” “fastening to an apparatus any of said extremities of said belt not already fastened to said apparatus,” the “powered belt tightener coupled to said extremities.” Applicants respectfully traverse these objections and rejection.

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These objections and rejection follow a unified path to their resolution. Initially, in the interviews alluded to above and as reflected in the subsequent letters from the Office, the examiners responsible for the present application have agreed with Applicants' undersigned attorney that the specification, as originally filed in 1995 (for an ancestor of the present application) supported shifting the species under discussion to Figure 1. Doing so provided a basis for the language of the claims except the verbiage "a substantial majority of" and "major" in paragraph A. The present amendment to all of the independent claims remaining under examination should serve to remove all of the formal objections and rejections. This action is respectfully requested.

*B. Potential Claim Rejection – Szpur Drawing*

The other remaining issue concerns a drawing by Mr. Roman Szpur. This drawing has been incorporated as Figure 10 of the application and (now) bears the legend "Invention of Another." The present application had been rejected (in part) under 35 U.S.C. §§ 102(a) and (b) and 103(a) over this drawing in the Office action of August 6, 2007. The October 15, 2007, Response showed that the Szpur drawing did not constitute prior art under the cited statutory sections. The subsequent Office action of November 11, 2007, did not contain a rejection based, even in part, over the Szpur drawing of Figure 10.

However, the question has arisen as to the availability of the original of the Szpur drawing as a reference under 35 U.S.C. § 102(f) or possibly § 102(a). The undersigned had indicated that Applicants can and will provide an affidavit or declaration showing that their invention predated the disclosure to them of the Szpur drawing.

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Accordingly, Applicants now submit a declaration by one of them (Thomas E. Lach) providing drawings and documents with their dates deleted. However, the declaration also avers that these documents and the invention of the claims were in existence before the date of September 28, 1994, which appears on the Szpur drawing<sup>1</sup> as the date that Mr. Szpur showed the drawing to various Applicants. The currently submitted Declaration of Thomas E. Lach as well as the exhibits attached to it clearly shows two facts. First, Applicants had conceived and developed their invention as presently claimed well before the September 28, 1994, effective date of the Szpur drawing. Further, they had achieved a reduction to practice before that date as well. Accordingly, the issue (not yet a rejection) based on the Szpur drawing would appear overcome.

*C. Conclusion*

The formal rejections and objections of the February 16, 2011, have, by agreement between the examiners and the undersigned attorney, been resolved. Further, the currently suggested reference of the Szpur drawing with an effective date of September 24, 1994, has also been overcome. As a result, the only remaining issues preventing the allowance and issuance of the present application appears to have been removed. Accordingly, the present application appears in condition for allowance. This action is respectfully requested.

Thus, Applicants believe that the above amendment and discussion have placed the present application in condition for allowance. However, should some minor impediment prevent this action, then the examiner is respectfully requested to contact Applicants'

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<sup>1</sup> This date is the date upon which various Applicants first reviewed the Szpur drawing. The other date of January 7, 1994, has no explanation and no evidentiary support. Accordingly, it cannot serve as a reference.

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attorney at the telephone number given below. Hopefully, such a phone call will portend a substantial saving of effort on the parts of the Patent and Trademark Office as well as Applicants.

Applicant encloses the form PTO-2038 of the undersigned attorney in the amount of \$65.00 for a one-month extension of the time for a small entity to respond to the February 16, 2011, Office action. Any required extension fee not paid for by the enclosed form PTO-2038 may be charged to Deposit Account 06-2135 of the undersigned attorney.

Respectfully submitted,

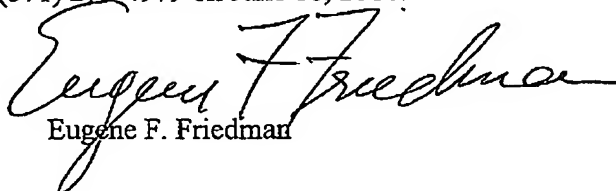


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#### CERTIFICATE OF FAXING

I certify that this correspondence is being faxed to the Commissioner for Patents at phone numbers (571) 273-8300 and (571) 273-4979 on June 16, 2011.



Eugene F. Friedman

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Further, as discussed previously in the prosecution of the present application, *see* the October 15, 2007, Response, it does not otherwise constitute prior art recognizable under either Title 35 U.S.C., § 102 or § 103.